IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9371 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IRFAN ABU MOHAMMED ANSARI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Petitioner

MR UDAI BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 09/11/2000

ORAL JUDGEMENT

1. Heard learned Advocate Ms.Banna Datta for petitioner and learned AGP Mr.Udai Bhatt for respondents No. 1, 2 and 3.

2. Detention order came to be passed against the

present petitioner by respondent No.1, Commissioner of Police, Ahmedabad City, Shahibaug, Ahmedabad, on 19th June, 2000, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short), is challenged in the present Special Civil Application under Article 226 of the Constitution of India.

3. The grounds of detention, copy of which is produced on record, indicates that three crimes are registered against the petitioner, as under :

(i) Kagdapith Police Station, Crime Register No.I-71 of 2000 under Sections 326, 504, 114 of the IPC and under Sec. 135(1) of the Bombay Prohibition Act. The crime was registered on 16th of February, 2000.

(ii) Kalupur Police Station, Crime Register No.I-124/2000 under Sections 324, 114 of the IPC and under Section 135(1) of the Bombay Police Act. The crime was registered on 8th June, 2000.

(iii) Kagdapith Police Station, Crime Register No. I-246 of 2000 under Sections 393,114 of the IPC and under Section 135(1) of the Bombay Police Act.

4. Out of three crimes, trial is pending in the court regarding Serial No.1 while serial No. 2 and 3 are pending at the stage of investigation. Detaining authority took into consideration the statement of the witnesses recorded in the above said three offences registered against the petitioner. Detaining authority also took into consideration other documents like panchnamas, etc. of the above mentioned three cases. Detaining authority also considered that weapons like sword, knife and hockey were seized from petitioner in the above said three offences registered against the petitioner. Detaining authority also relied upon the statements of two witnesses, who stated before the authority on assurance of not disclosing their names and addresses and narrated the instances of dated 10th May, 2000 and 6th June, 2000, wherein the petitioner extracted money from the witnesses and created fear amongst the persons gathered at the spot. Public order was disrupted and due to anti social activity of petitioner, fear spread in the locality. Detaining authority after satisfying itself that the fear of both the witnesses was true, exercised powers under Section 9(2) to keep the names and addresses of the above said witnesses

undisclosed. From the above ground, the petitioner is described as a "dangerous person" as per Section 2(c) of the PASA Act and the detaining authority passed the order of detention on 19th June, 2000.

5. On behalf of the petitioner, the order of detention was challenged on number of grounds. One of this grounds is failure on the part of the detaining authority to take into consideration the less drastic remedy of opposing the bail and resorting to the proceeding of cancellation of bail.

6. The impugned order of detention is required to be set aside on the ground of non-consideration of less drastic action alone and therefore, the other grounds urged by the petitioner are not dealt with.

7. In the matter of ZUBEDABIBI RASIDKHAN PATHAN vs. STATE OF GUJARAT, reported in 1995 (2) GLR 1134, Division Bench of this Court observed that non-consideration of less drastic remedy like cancellation of bail under Section 437(5) of the Cr.P.C. amounts to non-application of mind, vitiating the detention order. This view is fortified again by the Division Bench of this Court in Letters Patent Appeal No. 1056 of 1999, which is decided on 15th of September, 1999.

8. Grounds of detention supplied to the detenu nor the record reveals that detaining authority considered for resorting to the proceedings of cancellation of bail or opposed the bail of the petitioner, to prevent him from indulging in anti social activities. However, on the contrary, in Criminal Misc. Application No. 498 of 2000, before the City Sessions Judge, Ahmedabad, in respect to the Crime Register No.71 of 2000 of Kagdapith Police Station, Public Prosecutor for the State did not object to the bail asked for by the petitioner. Therefore, due to this non-application of mind of the detaining authority, subjective satisfaction is vitiated rendering the order of detention invalid.

9. In view of the above discussion, this Special Civil Application is allowed. The detention order of the petitioner dated 19th June, 2000 passed by the respondent No.1 Commissioner of Police, Ahmedabad City is hereby ordered to be quashed and set aside. Petitioner - Irfan Abu Mohammed Ansari is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute to that extent.

D.S. permitted.

(J.R. Vora, J.)

p.n.nair